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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

~~No. 1411~~ 1209

UNION PETROLEUM CORPORATION,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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May 31, 1967

FIDELITY PRINTING COMPANY, INC., HOUSTON

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above-entitled case on April 10, 1967.

OPINION BELOW

There is no opinion of the District Court. The judgment of the Court of Appeals was entered on April 10, 1967 (10th Cir. R. 4). Its opinion, not yet reported, appears, *infra,* as Appendix B.

JURISDICTION

The judgment of the Court of Appeals was entered April 10, 1967 (10th Cir. R. 4). A petition for rehearing, timely filed, was denied on May 1, 1967 (10th Cir. R. 6). The juris-

diction of this court is invoked under 28 U.S.C. §1254(1) and Rule 22(2):

QUESTIONS PRESENTED

1. Are culpability, *mens rea* or scienter material issues in a criminal prosecution for paying less for freight charges than that due?

2. Is it a criminal act for a person to pay less freight to a railroad than the amount due under the applicable tariff if the person computed and paid the correct amount under a different tariff which he reasonably and honestly believed was applicable?

STATEMENT

This is a criminal prosecution under the Elkins Act. While no individuals were prosecuted they could have been (49 U.S.C. § 41(1), App. A). Therefore, the new fundamentals of criminal law announced by the court below and involved in this Petition would be as equally applicable to an individual sentenced to two years imprisonment as to a corporation upon whom substantial fines have been imposed. This prosecution was commenced by an information (R. 1) filed by the United States against Petitioner in the United States District Court for the Eastern District of Oklahoma under the Elkins Act. The information contains 26 counts covering 26 separate shipments by railroad of propane, a liquefied petroleum gas (LPG).* The substance of each count was that Petitioner had solicited, accepted and received from the railroad a freight rate

* Liquefied petroleum gas: a compressed gas consisting of flammable, light hydrocarbons (as propane and butane) obtained esp. as a by-product in the refining of petroleum or the manufacture of natural gasoline and used chiefly as a domestic and industrial fuel, as a motor fuel, and as a raw material for chemical synthesis (as of synthetic rubber)—abbr. LPG. Webster's Third New International Dictionary (1964).

concession by the "device of falsely representing" to the railroad that freight charges due on the shipment were to be calculated in accordance with the Transit Tariff described below. Following a non-jury trial, Petitioner was found guilty and fined $1,000 on each count. As noted above, Petitioner's timely appeal to the United States Court of Appeals for the Tenth Circuit was unsuccessful and the conviction was upheld.

The facts concerning each shipment are substantially identical and have been stipulated. Each shipment was of railroad tank cars of propane obtained by Petitioner from the refinery of Sunray DX Oil Company at Sunray, Oklahoma, and shipped by rail to a point in the State of Missouri where it was delivered to a customer of Petitioner during late 1962 and early 1963. This customer distributed propane at retail to its customers for use in gas-burning appliances. It has been stipulated that there are two railroad freight rate tariffs which could be applicable to these shipments. The government contends that the amount of freight which should have been paid on each shipment should be calculated in accordance with a "local" tariff. The Petitioner contends that the amount due and paid the railroad for each shipment was properly calculated in accordance with the terms of the Transit Tariff described below. If the Transit Tariff used by Petitioner in calculating the amount paid to the railroad is not applicable, then less freight was paid to the railroad (mistakenly or not) than was due under the other possibly applicable tariff—the local tariff.

The Transit Tariff which Petitioner contended was applicable to determine freight rates on the shipments described in the information is the Southwestern Lines General Transit Rules Tariff. Pertinent provisions of this tariff are annexed hereto as Appendix D photographically reproduced — in the exact form the tariff pages are made

available to shippers such as Petitioner (except for some underscoring which was done for the benefit of the courts below).

As appears from the few pages of the Transit Tariff that are annexed hereto as Appendix D, the Transit Tariff is several hundred pages long, and covers all variety of commodities ranging from concrete molds to glass chimneys. Its incredible complexity can only be appreciated by examination of a page or two of its antiquated symbols, confusing cross-references and complex tables. For example, the "transit charge" is found in Part 1 of item 2658 (which appears in the middle of page 259 of the Transit Tariff — reproduced photographically in Appendix D) in this form:

Part 1— Transit Charge

The transit charge shall be { N16 @ 4½ / N16 @ 4½ } cents per hundred lbs on the outbound weight of the transit portion, which shall be in addition to the through rate.

The provisions of the Transit Tariff involved had not been the subject of judicial decision prior to this case. Several experts in freight rate tariff matters testified at the trial as to their opinion as to the applicability of the Transit Tariff to the shipments in question.

At the trial the tariff-publishing representative of the railroad vacillated and equivocated in his testimony, and then finally admitted that he did not know whether or not the Transit Tariff permitted Petitioner to use transit-computed rates or not (R. 116-121).

Every expert witness from the liquefied petroleum gas industry that had an opinion as to whether or not the Transit Tariff was applicable to Petitioner in the situations described in the information testified that transit was available to Petitioner (R. 89, 95, 123-124, 130-132).

The only witness testifying unequivocally that the Transit Tariff was not available to Petitioner was the representative of the Interstate Commerce Commission—the prosecuting witness, if you please. He took the position that transit was not available because the LPG shipped out of the transit station by Petitioner was of a different molecular structure than that shipped in. This, of course, was testimony directly contrary to that of the disinterested expert witnesses.*

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is in direct conflict with a decision of this Court, *Lehigh Coal & Navigation Company* v. *United States*, 250 U.S. 556 (Appendix C, *infra*), and with a decision of another Court of Appeals. *Standard Oil Company of Indiana* v. *United States*, 164 Fed. 376 (7th Cir. 1908), cert. denied 212 U.S. 579 (1909).

2. The Court of Appeals' decision is erroneous because that court thought insignificant Congress' very obvious addition of the word "knowingly" as a modifier of all of the elements of an Elkins Act violation.

3. A conviction of a statutory crime in the absence of proof of *mens rea*, a guilty mind, is contrary to present-day concepts of criminality.

4. Shippers need to know if their honest mistakes are crimes.

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* The witness from the Interstate Commerce Commission would interpret the Transit Tariff as allowing transit-computed rates to LPG shipped in and out only if the LPG is put into dead storage or, in any event, if its molecular or chemical composition remains unchanged. He reached this conclusion despite the wording of the tariff (Item 2648, Appendix D.) that the scope of permissible processing at the transit station "includes also the following additional privileges at the transit station either prior or subsequent to placing in storage: Mixing, blending, fractionating (separating), purification, dehydrating and/or adding malodorant agent."

1 and 2. Discussion of the Conflicts.

It is apparent that the trial court was convinced that Petitioner made no attempt at deception, as evidenced by the remarks of the court and the imposition of the minimum fine of $26,000. (R. 144, 167). The maximum fine which could have been imposed was over $500,000. Yet the court concluded as a matter of law that "intent doesn't have a thing on earth to do with it," that conviction of Petitioner was "just mandatory" and that the court did not "have any alternative" (R. 167).

The Court of Appeals summarily dismissed Petitioner's contentions, which were based on this Honorable Court's holding in *Lehigh Coal & Navigation Company* v. *United States,* 250 U.S. 556, that since the word "knowingly" was inserted into the Act by amendment in 1906 an honest belief that the right rate has been paid is a defense to a prosecution under the Elkins Act.

The Courts below both erred in concluding that intent is immaterial in a criminal prosecution under the Elkins Act under a decision of this Court.

In a criminal prosecution of a shipper under the Elkins Act for knowingly accepting transportation at less than the duly established rate by receiving a privilege that was referred to in the tariff, but was not sufficiently spelled out in detail therein, this Court has held that it is a valid defense that the concession was received under the honest belief that it was lawfully established by the tariff, and under the honest belief that, in receiving it, the shipper was not disregarding what it believed to be the provisions of the tariff, but was complying therewith. *Lehigh Coal & Navigation Company* v. *United States,* 250 U.S. 556 (1919);

see also *Standard Oil Co. of Indiana* v. *United States,* 164 Fed. 376 (7th Cir. 1908), cert. denied 212 U.S. 579.

In the *Lehigh* case the shipper was prosecuted under the Elkins Act for receiving a privilege from the carrier which was referred to in the carrier's published tariff but was not specified in detail therein. That shipper was convicted in the District Court and appealed on the grounds that (1) it had interpreted the tariff correctly, or (2) if not, it should "be acquitted on proof that it accepted the concessions in the honest belief that it was not disregarding but was in truth complying with the lawful provisions of the published tariffs." *Lehigh Coal & Navigation Company* v. *United States,* 266 Fed. 457 (3rd Cir. 1920). The Court of Appeals certified the question raised by this second contention to the Supreme Court, and the Supreme Court answered in favor of the defendant-shipper. The Court of Appeals then held that the shipper had interpreted the tariff incorrectly and had received a concession, but reversed the conviction because of lack of culpability.

The court below relies on the earlier decision in *Armour Packing Company* v. *United States,* 209 U.S. 56 (1908), to support its contention that honest misinterpretation of a tariff is no defense. The Government's reliance on this case is misplaced, since the Supreme Court in the *Lehigh* case expressly limited the scope of the *Armour* case. In distinguishing the *Armour* case, the Court in the *Lehigh* case emphasized that the shipper in the *Armour* case did not comply with what it believed to be the proper tariff but instead completely ignored the tariff and acted in reliance upon a private contract.

In the case at bar, as in the *Lehigh* case, the shipper attempted to comply with the tariff which it honestly

believed to be applicable. Such belief was based upon a reasonable interpretation of the literal terms of the tariff and the decisions of the Interstate Commerce Commission and the Federal courts which, as presented in brief and argument to the court below, provide legal authority for each step of Petitioner's computation of rates in accordance with the Transit Tariff.

It is also significant that in the *Armour* case the offense was committed at a time when the word "knowingly" did not appear in the Elkins Act. The pertinent language of the Elkins Act, 32 Stat. 847 (1903), at that time provided as follows:

> "Every person or corporation who shall offer, grant or give or solicit, accept or receive any such rebate, concession or discrimination shall be deemed guilty of a misdemeanor. . . ."

However, the alleged violation in the *Lehigh* case occurred after the word "knowingly" was added to the Elkins Act by the Hepburn Act, 34 Stat. at L. 587 (1906). The Hepburn Act amended the pertinent language of the Elkins Act to read as follows:

> "Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor. . . ."

Further, the issue in the *Lehigh* case and this case was expressly reserved from decision in the *Armour* case. The Court in the *Armour* case reserved judgment on this issue:

> "Whether shippers who pay a rate under the honest belief that it is the lawfully established rate, when in fact it is not, are liable under the statute because of a duty resting on them to inform themselves as to the existence of the elements essential to establish a rate as required by law, is a question not decided, because not arising on this record."

This unresolved question was first presented and decided by the Seventh Circuit in favor of the shipper, and certiorari was denied by the Supreme Court just one year after its decision in the *Armour* case. *Standard Oil Company of Indiana* v. *United States,* 164 Fed. 376 (7th Cir. 1908), cert. denied 212 U.S. 579 (1909). The Court of Appeals quoted the question not decided by the Supreme Court in the *Armour* case as being the precise question involved in the *Standard Oil* case. The court reviewed the purpose for the Elkins Act and then concluded as follows:

> "But is the ordinary shipper, under any reasonable view of the situation to which the law relates, thus bound — bound at his peril, under this law intended to promote commerce, to cipher out, before he can safely put anything that he has into commerce, all the confusing papers and figures that generally make up a tariff sheet? Plainly not, it seems to us."

Recognizing that tariffs by their very nature are confusing, complicated and difficult to interpret, the Court held that a shipper is not guilty under the Elkins Act of having received a rate less than the lawfully published rate if he does not know that the rate received is less than the published rate, thereby not consciously ignoring the tariff.

The Government relied heavily below on *Nichols and Cox Lumber Co.* v. *United States,* 212 Fed. 588 (6th Cir. 1914)

(and its companion case, *Grand Rapids & I. Ry. Co.* v. *United States,* 212 Fed. 577 (6th Cir. 1914)), which, if it correctly states the law applicable to the instant case, would refute Petitioner's arguments. However, the *Nichols* case was decided several years prior to the Supreme Court's decision in the *Lehigh* case. The holding in the *Nichols* case is based on the Supreme Court's decision in the *Armour* case and is not surprising in view of the precedents then available to the Court. As the Third Circuit noted in the *Lehigh* case after the Supreme Court had answered the certified question in favor of the shipper, the Court's decision in favor of the shipper on the issue of good faith as a defense was against the trend of the decisions at that time.

Thus, it is clear that the most recent and authoritative pronouncement of this Court (and the only one since the word "knowingly" has been in the statute) establishes that an honest and reasonable misinterpretation of a tariff is a valid defense to an Elkins Act prosecution, and the *Armour* case and the *Nichols* case (and other cases which rely on them as authority) are out of date and not pertinent (and perhaps overruled) on the question of good faith.

Petitioner recognizes that several courts have erroneously cited and relied on the *Armour* case in holding that good faith misinterpretation of a tariff is no defense to a criminal prosecution under the Elkins Act. See, *e.g., United States* v. *Satuloff Bros.,* 79 F.2d 846 (2nd Cir. 1935); *United States* v. *Altman,* 8 F. Supp. 880 (W.D.N.Y. 1934); *Powell* v. *United States,* 112 F.2d 764 (4th Cir. 1940). These courts were apparently not aware of the limitation placed upon the *Armour* case by the Supreme Court in *Lehigh,* since the *Lehigh* case was not cited in the opinions.

The Supreme Court has never overruled or questioned its decision in the *Lehigh* case. Therefore, despite the

apparent oversight of several courts which has resulted in the perpetuation of an erroneous view of the law in this respect, the holding of the Supreme Court of the United States in the *Lehigh* case that good faith misinterpretation of a tariff is a valid defense in a criminal prosecution under the Elkins Act still stands.

3 and 4. Discussion of the Lack of Criminality Involved.

There are few neat analogies to the thrust of the opinion of the court below that culpability is immaterial. There are perhaps more cases discussing culpability as an element of criminality in the area of the crime of statutory rape than in any other. There has been recent and thoughtful treatment of the subject by the Supreme Court of California in *People* v. *Hernandez,* 61 Cal. 2d 529, 39 Cal. Rptr. 361, 393 P.2d 673 (1964). In this case the California Supreme Court overruled its ancient decision in *People* v. *Ratz,* 115 Cal. 132, 46 Pac. 915 (1896) (a precedent of nearly three-quarters of a century standing) on the question of whether or not a reasonable, good faith belief that the girl was over the age of consent is a defense to a charge of statutory rape. In a well-reasoned opinion, the court in the *Hernandez* case held, quite simply and directly, that it was contrary to modern but basic concepts of criminal jurisprudence to convict one of a statutory crime in the absence of culpability.

The simple, direct statement of the California court cannot be improved upon:

> "The primordial concept of *mens rea,* a guilty mind, expresses the principle that it is not conduct alone, but conduct accompanied by certain specific mental states which concerns, or should concern the law . . .

> [T]he case books are filled to overflowing with the courts' struggles to determine just what state of mind should be considered relevant in particular contexts. In numerous instances culpability has been completely eliminated as a necessary element of criminal conduct. . . . More recently, however, this court has moved away from the imposition of criminal sanctions in the absence of culpability where the governing statute, by implication or otherwise, expresses no legislative intent or policy to be served by imposing strict liability."

In the case at bar, Petitioner's plea of lack of culpability was dismissed with a restated "ignorance of the law is no excuse". Petitioner has no quarrel with that general proposition. Petitioner then knew and now knows the law. It was a crime if Petitioner *knowingly* received a rebate, concession or discrimination by a device. The question left unanswered is, "If Petitioner did not *know* it was receiving a concession by a device, did it nevertheless commit the crime?"

Traffic management has usually been regarded as a reasonably steady, risk-free occupation. However, if the decision of the court below is allowed to stand, every traffic manager or other shipper of freight is put in peril of very substantial fines and long jail terms if he reasonably and innocently misinterprets a complicated tariff such as the one involved in this case.

Despite diligent search, Petitioner has been unable to unearth another single instance in criminal jurisprudence in which an honest, reasonable misinterpretation of a complicated document constitutes a crime.

A traffic manager needs to know if his mistakes are crimes.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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May 31, 1967

APPENDIX A

STATUTES

LEGISLATION SUPPLEMENTARY TO "INTERSTATE COMMERCE ACT"

§ 41. Liability of corporation carriers and agents; offenses and penalties

Liability of corporation common carriers; offenses; penalties; jurisdiction

(1) Anything done or omitted to be done by a corporation common carrier, subject to the Act to regulate commerce and the Acts amendatory thereof, which, if done or omitted to be done by any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, would constitute a misdemeanor under said Acts or under sections 41, 42, or 43 of this title, shall also be held to be a misdemeanor committed by such corporation, and upon conviction thereof it shall be subject to like penalties as are prescribed in said Acts or by sections 41, 42, or 43 of this title, with reference to such persons, except as such penalties are herein changed. The willful failure upon the part of any carrier subject to said Acts to file and publish the tariffs or rates and charges as required by said Acts, or strictly to observe such tariffs until changed according to law, shall be a misdemeanor, and upon conviction thereof the corporation offending shall be subject to a fine of not less than $1,000 nor more than $20,000 for each offense; and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said Act to regulate com-

merce and the Acts amendatory thereof whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said Act to regulate commerce and the Acts amendatory thereof, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than $1,000 nor more than $20,000: *Provided,* That any person, or any officer or director of any corporation subject to the provisions of sections 41, 42, or 43 of this title, or the Act to regulate commerce and the Acts amendatory thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by any such corporation, who shall be convicted as aforesaid, shall, in addition to the fine herein provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. Every violation of this section shall be prosecuted in any court of the United States having jurisdiction of crimes within the district in which such violation was committed, or through which the transportation may have been conducted; and whenever the offense is begun in one jurisdiction and completed in another it may be dealt with, inquired of, tried, determined, and punished in either jurisdiction in the same manner as if the offense had been actually and wholly committed therein.

APPENDIX B

OPINIONS AND JUDGMENTS BELOW

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

NO. 8646 — MARCH TERM — 1967.

UNION PETROLEUM CORPORATION, A Corporation, Appellant, Vs. UNITED STATES OF AMERICA, Appellee.	Appeal From The United States District Court For The Eastern District of Oklahoma

Hugh Q. Buck, Houston, Texas, (Austin C. Wilson, Thomas J. Brorby, and Fulbright, Crooker, Freeman, Bates & Jaworski, all of Houston, Texas, with him on the brief), for Appellant.

Bruce Green, United States Attorney, Muskogee, Oklahoma, (Eugene J. Schubert, Attorney I.C.C., Washington, D.C., with him on the brief), for Appellee.

Before PICKETT and HICKEY, Circuit Judges, and STANLEY, United States District Judge.

PICKETT, Circuit Judge

This is an appeal from the judgment of the United States District Court for the Eastern District of Oklahoma, finding appellant Union Petroleum Corporation guilty of violating Section 1 of the Elkins Act, 49 U.S.C. § 41(1), and imposing a $1,000 fine for each of 26 counts of knowingly soliciting and accepting concessions from a common carrier through the device of claiming a transit privilege to which it was not entitled. Each count represents a separate carload shipment of liquefied petroleum gas (LPG) from the transit station in Sunray, Oklahoma to destinations in Missouri.

The controversy involves shipments of isobutane by Union from origins in Texas to Sunray, Oklahoma, selling the isobutane to Sunray D-X Oil Company, buying propane from Sunray D-X and shipping it to Missouri, paying the transit rate instead of the local rate for such shipments. Union, an Oklahoma corporation, is engaged in the distribution and sale of LPG. It purchased isobutane from suppliers in Texas and shipped it by railroad to Sunray, where Sunray D-X operates a refinery for the production of high octane motor gasoline. Pursuant to contract, Sunray purchased all of the isobutane delivered to it by Union, and Union purchased propane produced locally by Sunray D-X. Union neither owned nor leased any storage facilities at Sunray. Union did not store isobutane in any facilities at Sunray, but rather sold all of it to Sunray D-X. This isobutane contained a small amount of propane which was usually considered an impurity. The outbound propane involved was locally produced by Sunray D-X almost entirely from crude oil obtained elsewhere, and then it was sold to Union. Union then shipped this propane by railroad to destinations in Missouri, there to be sold to Gygr Gas Service.

The basic question to be determined is which of two tariffs, both lawfully published and filed with the I.C.C.

by the carriers involved, is applicable to the above-described operation. One of the tariffs provided for a local rate of 51½¢ per cwt. from Sunray to the Missouri destinations. The other tariff provided a transit privilege which authorized the application of the balance of the through rate from the Texas origins plus a transit charge which resulted in a charge of 8½¢ or 9½¢ per cwt., depending upon the particular Missouri destination. The government contends that the local rate tariff is applicable, while Union contends that the transit tariff is applicable. Union paid the carrier on the transit tariff basis. If the transit tariff is applicable to the shipments of propane, then Union did not pay a lesser rate than specified by the applicable tariff. However, if, as the government charges, the local rate tariff is applicable to the propane shipments, then Union paid a lesser rate than specified and received concessions in violation of the Elkins Act.[1]

It is stipulated that Union had full knowledge of all the published tariff rates, as well as all of the facts and circumstances surrounding the transportation of the isobutane from Texas to Sunray and the propane from Sunray to Missouri.

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[1] 49 U.S.C. §41(1), provides in pertinent part:
". . . and it shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to said chapter whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by said chapter, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebates, concession, or discrimination shall be deemed guilty of a misdemeanor, . . ." See Armour Packing Co. v. United States 209 U.S. 56, for a discussion of the Elkins Act and the elements of an offense thereunder.

Union contends that the trial court erred in holding that it was not entitled to the transit privilege under Southwestern Lines General Transit Rules Tariff 174-U. It is Union's position that this tariff permits the substitution of outbound, non-transit propane for inbound isobutane; that there is no distinction in the tariff between isobutane and propane; that these are merely different forms of the same basic commodity, LPG, and as such, representative of each other. We cannot agree.

After careful consideration, we are satisfied that the record amply supports the trial court's conclusion that the transit Tariff 174-U does not contemplate such operation as occurred here.[2] Union strenuously urges that Item 2652, Part 2(c) of the Tariff specifically permits the substitution

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[2] An officer of the I.C.C. testified as follows:

> "Q. Mr. Gibbs, if a person shipped in one item, such as iso-butane, from Texas to Sunray, Oklahoma, sold that isobutane at Sunray, Oklahoma, and shipped out propane to either Boonville or Versailles, Missouri, would the shipment of propane from Sunray, Oklahoma, to either Boonville or Versailles, Missouri, come under which tariff, the one you were testifying about or any other tariff? * * * A. In the circumstances you related there, sir, the rate from Sunray that I have just mentioned, 51½¢ would be the applicable rate."

And, upon cross-examination, the government elicited the following testimony from an officer of the Southwestern Freight Bureau:

> "Q. If you ship in isobutane and make high octane gasoline out of it, and ship it in under transit, and then ship in crude oil and make propane out of that, and ship the propane out which is made from the crude oil, can the shipment of the isobutane and propane be transit, if there is no connection between the two? A. No. * * *
>
> Q. If you ship in isobutane and make high octane gasoline out of it 3% of the propane shipped in goes to butane but most of the butane is made from crude oil, which has nothing to do with the isopropane and you ship then the propane out, is that transit as between the isobutane and the propane? A. Not on 97%, no."

of outbound propane for the inbound isobutane. That Item provides in part: "In the operation of these rules it is impractical to maintain the identity of transit and non-transit tonnage in the shippers' facilities, and nothing in these rules shall prohibit the shipment of non-transit tonnage hereunder . ." We think, however, that Union misplaces reliance upon this provision, as it is apparent that Union had neither storage facilities nor transit tonnage at Sunray. This provision would seem to comprehend a different situation entirely.[3] Furthermore, we are aware of the

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[3] The government's expert witness, an I.C.C. officer, testified as follows:

"Q. Now, sir, are you acquainted with this tariff? A. Yes, sir.

Q. I would call your attention to Item 2652 on page 256, Paragraph (c). A. Yes, sir.

Q. Would you explain the meaning of that particular paragraph (c)? A. Well, the paragraph says that in the operation of these rules, it is impractical to maintain the identity of transit and non-transit tonnage in the shippers' facilities, and nothing in these rules shall prohibit the shipment of non-transit tonnage hereunder provided the shipper shall surrender for cancellation freight bills in excess of inventory in storage as provided in 2. While the operation of the rules, of course, permit storage in transit as being impractical to maintain their identity as transit and non-transit tonnage in the shippers' facilities, means that these are fundable articles or commodities that are being transited and that you may have some transit articles in storage, for example, this pertains to gas. The transit may have expired on those articles and you may have transit articles—you may have a type of gas, for example, isobutane stored with isobutane upon which the transit has not expired, and it means that you do not have to keep them separated. It would be impractical to do that because perhaps when they first went into storage they were all good for transit.

Q. Okay, sir. Now do you construe that paragraph as meaning that, first of all, that before that paragraph comes into play, there has to be a transit item in storage? A. Yes, sir, it does.

Q. Now, sir, if isobutane was purchased in Texas and shipped to Sunray, Oklahoma, and sold and the purchaser

I.C.C. decisions, cited by Union, which permitted certain substitution respecting corn, cotton, and wheat. Board of Trade of the City of Chicago v. Grand Trunk Western R.R. Co., et al., 255 I.C.C. 141; Substitution of Cotton in the Southwest, 241 I.C.C. 153; Stout v. Alton R.R. Co., et al., 227 I.C.C. 281. But these cases involved different commodities and different tariffs, and in each there was a finding that the application of transit rates was either not discriminatory or not unreasonable. Accordingly, they are not apposite herein. Cf. Calif. Milling Corp. v. Southern Pac. Co. 292 I.C.C. 146.

In Utah Poultry Producers Co-Op v. Union Pacific R. Co., 147 F. 2d 975, 977, this court stated:

> "Transit privileges grant special concessions to a shipper. In permitting them, the Interstate Commerce Commission has been zealous in protecting the integrity of the through rate. It is made plain in all its decisions that unless such privileges are carefully circumscribed, they permit opening the doors to discrimina-

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of it made high octane gasoline out of this, and then that same purchaser had some crude oil and made propane out of the crude oil and perhaps 3% of it made up of these impurities in the isobutane and made propane out of it and this propane is shipped out, is that transit, A. It is not. Q. Now if all of the gas, both isobutane and propane, stored at Sunray came in and went out in that manner, would any of it be transit? A. If all of the isobutane and all of the propane—

Q. Came in and went out in the manner I explained, would any of it be transit? A. No, it would not.

Q. And if none of it was transit, would Paragraph (c) of Item 2652 on page 256, in Tariff 174-U, become applicable if none of it was transit? A. No, if none of the item was transit, it would not be applicable.

Q. Now, sir, did you in your study of this tariff find anything in this tariff which would permit an operation such as I have described to be transit or classified as transit? A. No."

> tion and thus tend to destroy the integrity of the through rate. While transit privileges are justified solely on the theory that the identical article or its exact equivalent or its product is finally shipped to the ultimate destination, some substitution is permitted under carefully formulated rules and regulations. Where substitution has been permitted, it has been of a similar article from the same or a comparable rate point. In this way, the integrity of the through rate is preserved and discrimination and unfair trade practices are prevented." (Footnotes omitted)

The situation here, in effect, amounts to a complete substitution of basically dissimilar products. Isobutane and propane are neither commercial nor chemical equivalents. There was local disposal of the inbound isobutane and local acquisition of the outbound propane, with no perceptible relationship between these inbound and outbound shipments. We understand the transit tariff privilege to contemplate storage, which includes processing, and then re-shipment.[4]

Furthermore, considering the unfair economic advantage which Union may enjoy by shipping locally produced products at a lesser transit rate, the evil of discrimination against local shippers is readily apparent. Cf. Boone v. United States, 6 Cir., 109 F. 2d 560. Indeed, we may not dismiss as insignificant the stipulation that Union charged its customer Gygr Gas Service according to the local rate

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[4] During post-trial arguments to the court, an I.C.C. officer explained the theory of transit in the following manner:

> ". . . The theory of transit is that the product comes in, is stopped, something is done to it. It is stored with some manufacturing process and then it is reshipped. Now they do permit substitution of a transit commodity, inbound commodity or non-transit commodity under certain circumstances where it is impossible to maintain the identity. They put it in the same storage facilities and they don't know which is the transit and which is the non-transit, and therefore they permit that, but there wasn't any transit. This transit operator had no facilities. He had no ownership. He had no control. He had no possession of the goods."

tariff, or 51½¢ per cwt., and that Union would have lost money on the purchase and sale of the propane had it not been for the profit it made on the freight rates by paying the transit tariff rate and charging the purchaser with the local tariff rate. It is our understanding that such practice comes well within the intendment of the Elkins Act, which is "to eliminate rebates, concessions or discriminations from the handling of commerce, to the end that persons and places might carry on their activities on an equal basis." Union Pacific R. Co. v. United States, 313 U.S. 450, 461, reh. denied 314 U.S. 707.

Union further asserts that it did not knowingly solicit or accept a concession, but acted in the honest and reasonable belief that it was entitled to avail itself of the transit tariff privilege. It is Union's position that such misinterpretation constitutes a valid defense to prosecution under the Elkins Act. Union relies primarily upon Lehigh Coal & Nav. Co. v. United States, 250 U.S. 556. However, in Armour Packing Co. v. United States, 209 U.S. 56, 85-86, cited by the government in support of its proposition that misinterpretation of the tariff is no defense, the Supreme Court stated:

> "While intent is in a certain sense essential to the commission of a crime, and in some classes of cases it is necessary to show moral turpitude in order to make out a crime, there is a class of cases within which we think the one under consideration falls, where purposely doing a thing prohibited by statute may amount to an offense, although the act does not involve turpitude or moral wrong. In this case the statutes provide it shall be penal to receive transportation of goods at less than the published rate. Whether shippers who pay a rate under the honest belief that it is the lawfully established rate, when in fact it is not, are liable under the statute because of a duty resting on them to inform themselves as to the existence of the elements essential

> to establish a rate as required by law, is a question not decided because not arising on this record. The stipulated facts show that the shippers had knowledge of the rates published and shipped the goods under a contention of their legal right to do so. This was all the knowledge or guilty intent that the act required."

Union stresses that the Armour case was decided prior to the insertion of the word "knowingly" into the Elkins Act by amendment of 1906. 34 Stat. 584, 587. We do not think that this amendment alters the fundamental principle that one's mistaken understanding of the law does not constitute a defense. See, Powell v. United States, 4 Cir., 112 F. 2d 764; Boone v. United States, supra. Cf Sinclair v. United States, 279 U.S. 263, 299, (citing Armour). Furthermore, the term "knowingly" imports merely perception of the facts necessary to bring the questioned activity within the prohibition of the statute. The term does not require as a part of its meaning that there necessarily be knowledge or awareness that such activity is in fact prohibited. United States v. Keegan, 7 Cir., 331 F. 2d 257, cert. denied 379 U.S. 828. Union had full knowledge of the tariffs as well as all facts which would render the transit privilege inapplicable and discriminatory herein, but it nevertheless operated upon the supposition of its legal right to do so. "The courts have found the statutes effective to accomplish the destruction of discriminatory practices, whatever their form. Violation of the commerce acts through receipt of advantages is to be tested by actual results, not by intention. Any and all means to accomplish the prohibited end are banned." Union Pacific R. Co. v. United States, supra at 461-462.

AFFIRMED.

Judgment

Seventeenth Day, March Term, Monday, April 10th, 1967.

Before Honorable John C. Pickett and Honorable John J. Hickey, Circuit Judges, and Honorable Arthur J. Stanley, Jr., District Judge.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Oklahoma and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said district court in this cause be and the same is hereby affirmed.

APPENDIX C

LEHIGH COAL & NAVIGATION COMPANY

v.

UNITED STATES

250 U.S. 556

November 10, 1919.

[559] Mr. Justice McKenna delivered the opinion of the court:

The case is here on certificate, an outline of which it is necessary to give.

The Lehigh Coal & Navigation Company, herein called the Company, is a miner and shipper of anthracite coal and was indicted, convicted, and fined in the district court of New Jersey for accepting rebates and concessions from the Central Railroad of New Jersey, in violation of the Elkins Act [Act of February 19, 1903, 32 Stat. at L. 847, chap. 708] as amended 1906 (Act of June 29, 1906, 34 Stat. at L. 584, chap. 3591, Comp. Stat. § 8563, 4 Fed. Stat. Anno. 2d ed. p. 337).

It was charged in the indictment that the Central Railroad Company was an interstate carrier of coal, and as such filed tariffs and schedules with the Interstate Commerce Commission showing its rates and charges from the coal fields in Pennsylvania to points in New Jersey.

During 1912, 1913, 1914, and a part of 1915, the tariffs were in force, and under them the Company shipped a carload (described in the indictment) from its colliery in Pennsylvania to a specified point in New Jersey, and accepted from the railroad a portion of the rate due and payable, so that the coal was carried at less than the rate,

and the Company thus received the advantage of an illegal rebate. Discrimination was not charged.

In accordance with circumstances, which are detailed at length in the certificate, among which was the fact that the Company at one time operated a railroad of its own (the Lehigh & Susquehanna), the Company decided to lease its railroad properties to the Central Railroad, a connecting carrier. Accordingly, March 31, 1871, it, the Company, made a lease to the Railroad, the 10th covenant of which provided as follows:

". ... on coal delivered for transportation by the Company on sidings at the northern end of the Nesquehoning tunnel, the rates of transportation shall not exceed **[560]** the rates charged at the same time from Penn Haven to the same points on coal from the Lehigh region, either by the Central Railroad or by the Lehigh Valley Railroad Company."

In making the lease naturally the Company took into account the advantageous nearness of its mines to tide, and sought to insure favorable rates for the coal from its colleries.

About 1878 the method of fixing rates was changed, but the rate to be charged the Company was fixed at 86 per cent of the rate charged to other mines in the Lehigh region, the reason being that there was that difference in distance. While this arrangement was in force the Company paid a net rate calculated on the basis of 86 per cent. After 1887, the date of the first Act to Regulate Commerce [Act of February 4, 1887, 24 Stat. at L. 379, chap. 104, Comp. Stat. § 8563, 4 Fed. Stat. Anno. 2d ed. p. 337] this method of settlement was changed and the Company was charged the full tariff rate, but was rebated or credited with 14 per cent thereof, this being done under the obligation or

supposed obligation of the 10th covenant. And between 1887 and August, 1906, when the Hepburn Act went into effect, this arrangement for repayment did not appear in the tariffs filed by the Railroad with the Commission. But in August, 1906, and thereafter, the tariffs contained a footnote in the following form:

"(4) In compliance with the 10th covenant of the lease from the Lehigh Coal & Navigation Company under which the Central Railroad Company of New Jersey operates the Lehigh & Susquehanna Railroad, a lateral allowance is made out of herein-named rates to the Lehigh Coal & Navigation Company on all anthracite coal originating on the latter's tracks in the Panther creek, Nesquehoning, and Hacklebarnie districts mined and shipped by it, when coming via the Hauto, Nesquehoning, and Mauch Chunk gateways."

All of the tariffs of the Railroad filed with the Commission after 1906 (262 in number) contained the footnote. **[561]** The allowance was 19.18 cents per ton, and this was credited in the monthly settlement of the Company's account with the Railroad, the credit being the point of the government's attack.

"The verdict covers twenty-seven shipments of coal in prepared sizes from Nesquehoning colliery for reshipment at Elizabeth. The foregoing facts were either proved or stipulated, and it appeared also without dispute that during the years in question the Company's officers were familiar with the contents of the Central Railroad's tariffs, and knew that the allowance was being made and accepted. One of the Company's defenses was that it had not 'knowingly' accepted a rebate within the meaning of the act,— its contention being, that the allowance had been accepted in good faith, in the honest belief that the payment was

justified by the 10th covenant, and also in the honest belief that the allowance was properly and legally noted and provided for in the filed and published tariffs."

The Company offered evidence that would support the following findings:

(1) At the time the note was made, it, the Company, was informed of it, but was advised that the note had been made part of the tariff, in full compliance with the Act of 1906, and that, being so, the payment and receipt of the allowance would comply with the tariff and the law, and the officers of the Company relied on this judgment.

(2) Between 1906 and the date of the indictment 262 tariffs, all containing the note, had been filed and accepted by the Commission.

(3) In 1908 the Company had been informed by the Railroad that the Commission (acting through one of the Commission's important officers, who was in charge of the tariffs) had specifically approved the form of the tariff containing the note, in spite of the fact that the amount of the allowance had not been specified therein, the Commission at the time having the question under consideration. **[562]** By reason of such information the Company honestly believed that the receipt of the allowance was not in violation of the tariff or the act, but was in compliance therewith.

(4) The Company's books, records, and accounts were examined by the Commission's investigators in 1909, and the Commission was thereby informed that the Company had received and was receiving the allowance, but the Commission did not object either to the form or the substance of the practice.

"The Company's evidence concerning good faith was received under the government's objection, and the government offered evidence in contradiction thereof. At the close of the trial the court struck out all the evidence on this subject from the record, and refused to submit the question of good faith to the jury, holding that the Company's honest belief that the allowance was permitted by the tariffs and the footnote thereto could not affect the issue, for the reason that the Company knew the contents of the tariffs, and knew also that the allowance was actually made and received."

The certificate asks the following questions:

"1. In the criminal prosecution of a shipper for knowingly accepting transportation at less than the duly established rate by receiving an allowance that was referred to in the tariff, but was not specified in figures therein, has the defendant a right to offer in evidence that the allowance was received under the honest belief that it was lawfully established by the tariff, and under the honest belief that, in receiving it, he was not disregarding what he believed to be the provisions of the tariff, but was complying therewith?

"2. Upon the foregoing facts, and in view of the kind and amount of evidence offered upon the subject of good faith, did the district court err in the present case by refusing to submit the question to the jury?"

The questions asked depend upon the construction of the Elkins Act, as enacted in 1903 (Act of February 19, 1903, 32 Stat. at L. 847, chap. 708), the relevant **[563]** part of which is as follows: ". . . It shall be unlawful for any person, persons, or corporation to offer, grant, or give or to solicit, accept, or receive any rebate, concession or discrimination in respect of the transportation of any property

in interstate or foreign commerce by any common carrier subject to said act to regulate commerce and the acts amendatory thereto whereby any such property shall *by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier* [italics ours] . . ."

And under an amendment in 1906 (Act of June 29, 1906, 34 Stat. at L. 584, chap. 3591, Comp. Stat. § 8597, 4 Fed. Stat. Anno. 2d ed. p. 549), an offender, "whether carrier or shipper, who shall knowingly offer, grant, or give, solicit, accept or receive any such rebate, concession, or discrimination shall be deemed guilty of a misdemeanor."

The way to a correct construction of the act was to an extent cleared by the case of Armour Packing Co. v. United States, 209 U. S. 56, 52 L. ed. 681, 28 Sup. Ct. Rep. 428. Its evolution was there detailed. It was said that carrier and shipper are charged with an equal responsibility and liability, and that the act "proceeded upon broad lines to accomplish" this equality, and "that the only rate charged to a shipper for the same service under the same conditions should be the one established, published, and posted as required by law." And this was declared in various ways to be the test of obligation and liability, and the "form by which or the motive for which" its evasion or disregard is accomplished is not of modifying or determining consideration. It was in effect decided that the purpose of the statute took emphasis and meaning from the use of the word "device," and "device" was defined to be "anything which is a plan or contrivance," and is "disassociated" from qualification, and "need not be necessarily fraudulent," and by it the act "sought to reach all means and methods by which the unlawful preference of rebate, or concession or discrimination is offered, granted, given, or received."

It is in effect the contention of the government that the [564] language of the case exhausts definition and excludes the supposition of the questions of the circuit court of appeals. We are unable to concur. The language of the case is easily explained by the question that was presented for decision. The Armour Packing Company contended that the act was directed only at fraudulent conduct, the obtaining of a rebate by some dishonest or underhand method, concession, or discrimination. The language of the court was addressed to this contention, and its selection and adequacy are manifest.

No such contention is made in the case at bar, and there are other distinguishing elements. It will be observed that by the statute and the decision the test of equality is the tariff rate. It was said in the opinion that it is "the purpose of the act to punish those who give or receive transportation, in the sense of actual carriage, at a concession from the published rates" (New York C. & H. R. R. Co. v. United States, 212 U. S. 500, 505, 53 L. ed. 624, 627, 29 Sup. Ct. Rep. 309). And such was the offense of the Armour Packing Company. There was no evasion of the tariff rate in the case at bar. The filed tariff indicated the existence and obligation of the 10th covenant of the lease from the Company to the Railroad; that is, the fact of the allowance was declared, though it did not have specification in figures. The tariff, of course, would have been more definite and complete with such specification, but its sufficiency was certainly believed in, for between 1906 and the date of the indictment it had 262 repetitions. The Company was given besides the assurance that it had the sanction of the Interstate Commerce Commission.

There was no attempt at deception. The Commission knew by examination of the Company's books of the allowance and the amount of the allowance. Such, then, is the

situation, and distinguishes the case from the Armour Packing Co. Case. There there was an omission to comply with the statute, and the omission was attempted to [565] be justified by honesty of motive and purpose; here there was compliance or attempted compliance with the statute,— a tariff filed, — and if a question could be raised upon its legal sufficiency the belief of the Company in its legality was supported by high authority, and those circumstances can bring into action and exculpating effect the provision of the statute which requires the acceptance of a rebate to be "knowingly" done to incur the guilt of a misdemeanor. This conclusion gives no detrimental example against the efficacy of the law.

We think this comment and conclusion enough to dispose of the questions asked, and that there is no necessity to review the cases cited by the Company or the government.

Some of the contentions of the government we may notice. It is contended that the "lateral allowance" provided for in the 10th covenant and footnote to the tariff was not for transportation services, and besides that there was no testimony whatsoever that the meaning of any provision of the tariff was misunderstood. The mistake, if any, it is hence insisted, was a mistake of law, not of fact. Two deductions are hence made by the government: (1) That the allowances were not made for transportation services; (2) mistake of law is irrelevant to the question of the guilt or innocence of the Company.

To the first we may reply it is not involved as an element in the question asked of this court, and if it have any justification, as to which we express no opinion, it no doubt will be considered by the circuit court of appeals upon the return of the case. The other expresses a refinement. Indeed, the contention of the government is somewhat

elusive and we are not sure that we exactly estimate it. It is said: "The sole misunderstanding which the excluded testimony tended to show would consist in supposing that the 'allowances' could be justified by the footnote in the tariff, and that, as we have seen, would be a [566] misunderstanding of the Elkins Act, and not of the tariff." We are unable to concur. There was no misunderstanding of the Elkins Act or what it required. The misunderstanding was induced by practice and the opinion of those in authority that the act was complied with; and the word "knowingly," therefore, as we have already indicated, must be considered and given exculpating effect if error there was.

We therefore answer the first question in the affirmative, but as explained by reference to the certificate of facts above, we do not think it is necessary to answer the second question.

Mr. Justice McReynolds took no part in the decision.

TARIFF

SUBJECT, EXCEPT AS OTHERWISE PROVIDED HEREIN, TO ITEM X-23, OR SUCCESSIVE ISSUES THEREOF

I. C. C. 4439
(For Cancellation Notice, see page 4) I. C. C. 4601

1-2-65

SOUTHWESTERN LINES FREIGHT TARIFF 174-U

(For Cancellation Notice, see page 4)

(Southwestern Freight Bureau, Agent)

LOCAL TARIFF

CONTAINING

RULES AND REGULATIONS

APPLYING AT STATIONS IN, OR ON TRAFFIC ORIGINATING AT OR DESTINED TO STATIONS IN

ARKANSAS
LOUISIANA
MISSOURI
NEW MEXICO
OKLAHOMA
TEXAS

ALSO

TRANSIT PRIVILEGES

APPLYING AT STATIONS IN

ARKANSAS
ILLINOIS
KANSAS
LOUISIANA
MISSOURI
NEW MEXICO
OKLAHOMA
TEXAS

ALSO

DENVER, COLO., MEMPHIS, TENN., NATCHEZ, MISS., AND VICKSBURG, MISS.

ALSO

RATES TO TRANSIT STATION ON LIQUEFIED PETROLEUM GAS AS SHOWN IN ITEM 2656

ALSO

STOPOVER PRIVILEGES TO COMPLETE LOADING OR PARTLY UNLOAD CARLOAD FREIGHT

AT STATIONS IN

ARKANSAS
COLORADO
KANSAS
LOUISIANA
MISSOURI
NEW MEXICO
OKLAHOMA
TEXAS

AND AT

MEMPHIS, TENN., NATCHEZ, MISS., AND VICKSBURG, MISS.

This Tariff also contains provisions for substitution of Trailer-on-Flat-Car Service as provided in Items 745 to 755.

For Intrastate Application, see Item 190.

GENERAL TRANSIT RULES TARIFF

ISSUED SEPTEMBER 22, 1961

EFFECTIVE NOVEMBER 2, 1961
(Except as otherwise provided herein)

Section 2

Item	SUBJECT	APPLICATION
42510	Cleaning and Storage in Transit of Forms or Molds, Concrete Construction, Iron or Steel	Shipments of Forms or Molds, Concrete Construction, iron or steel. (Will not apply on Material which may enter into the construction and become a permanent part of any work.)

ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
Chicago.....Ill.	Stations to which through rates are in effect via the transit station.	Houston.....Tex. Oklahoma City .....Okla.	Cleaning and Storage	1 and 2

Note 1—Subject to transit charge of (N)5 cents per 100 lbs. Minimum charge (N)$20.21 per car.
Note 2—Subject to rules and regulations in Items 400-405, 408 (Note 3), 410-445 and 455-520.
Note 3—Out-of-line exceptions:

When Via	Station Named in this Column will be Considered Intermediate	When Station Named Opposite in this Column is Intermediate
GC&SF (Santa Fe)..	Houston.....Tex.	Alvin or Somerville or Brownwood, (Note 4) Tex.
MoPac.....	Houston.....Tex.	Valley Jct., Tex.

Note 4—Applies only on traffic to stations in Arizona, California and New Mexico named in TCFB Freight Tariff 5-A, or on traffic delivered to or received from connecting lines of the AT&SF(Santa Fe) at interchange stations in California and Arizona.
(RN A-24-193-B)

Item	SUBJECT	APPLICATION
(C) 2642-D Cancels 2642-C and 2642-B	Storage in Transit of Gas, Liquefied Petroleum	Shipments of Liquefied Petroleum Gas, in tank cars.

ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
Stations from which through rates are in effect via the transit point.	Stations to which through rates are in effect via the transit point.	Ponca City...Okla.		
Stations in Southwestern Territory, as described in Item 200 of SWL Freight Tariff 5.	Stations in Central and Eastern Territories, as described in Item 200 of SWL Freight Tariff 5 to which through rates are in effect via the transit point. Also Western Trunk Line Territory, as described in Item 155 to which through rates are in effect via the transit point.	Sunray.....Okla.	Storage and Reshipment in tank cars	1 and 2

Note 1—Subject to rules and regulations in Items 2648-2658.
Note 2—Out-of-line exceptions:
Ponca City, Okla., on the AT&SF(Santa Fe), will be considered intermediate when Kiowa, Kan., or Ralston, Okla., on the AT&SF(Santa Fe) is intermediate.
Ponca City, Okla., on the CRI&P, will be considered intermediate when Enid, Okla., on the CRI&P is intermediate.
Sunray, Okla., on the CRI&P, will be considered intermediate when El Reno, Okla., on the CRI&P is intermediate.

Item	SUBJECT	APPLICATION
(C)	Rules and Regulations in Connection	**Rates to Apply** (a) Except as provided in paragraphs (a-1, a-3 and a-4), the full tariff rate from origin or origins to transit station will be assessed and charges collected accordingly. (Notes D, H, I, J, K and L) (a-1) Subject to provisions of paragraph (a-2) on shipments originating at stations on the T&P and TNM, the inbound rate to Baden, Tex., will be as provided in Note B. (a-2) The consignee at transit point to give a good and sufficient bond satisfactory to and approved by the carrier guaranteeing the payment of the full tariff rate in effect to the transit point at time of shipment at point of origin on any tonnage not reforwarded to interstate destinations within

Concrete Construction, Iron or Steel

When Via	Station Named in this Column will be Considered Intermediate	When Station Named Opposite in this Column is Intermediate
GC&SF (Santa Fe)..	Houston.....Tex.	Alvin or Somerville or Brownwood, (Note 4) Tex.
MoPac.....	Houston.....Tex.	Valley Jct., Tex.

Note 4—Applies only on traffic to stations in Arizona, California and New Mexico named in TCFB Freight Tariff 5-A, or on traffic delivered to or received from connecting lines of the AT&SF(Santa Fe) at interchange stations in California and Arizona.
(RN A-24-193-B)

36 2642-D Cancels 2642-C and 2642-B

Storage in Transit of Gas, Liquefied Petroleum

Shipments of Liquefied Petroleum Gas, in tank cars.

ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
Stations from which through rates are in effect via the transit point.	Stations to which through rates are in effect via the transit point.	Ponca City...Okla.		
Stations in Southwestern Territory, as described in Item 200 of SWL Freight Tariff 5.	Stations in Central and Eastern Territories, as described in Item 200 of SWL Freight Tariff 5 to which through rates are in effect via the transit point. Also Western Trunk Line Territory, as described in Item 155 to which through rates are in effect via the transit point.	Sunray.....Okla.	Storage and Reshipment in tank cars	1 and 2

Note 1—Subject to rules and regulations in Items 2648-2658.
Note 2—Out-of-line exceptions:
Ponca City, Okla., on the AT&SF(Santa Fe), will be considered intermediate when Kiowa, Kan., or Ralston, Okla., on the AT&SF(Santa Fe) is intermediate.
Ponca City, Okla., on the CRI&P, will be considered intermediate when Enid, Okla., on the CRI&P is intermediate.
Sunray, Okla., on the CRI&P, will be considered intermediate when El Reno, Okla., on the CRI&P is intermediate.

39 2650-B

Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615 2620, 2625-2645

Rates to Apply

(a) **Except as provided in paragraphs (a-1, a-3 and a-4)**, the full tariff rate from origin or origins to transit station will be assessed and charges collected accordingly. (Notes D, H, I, J, K and L)

(a-1) Subject to provisions of paragraph (a-2) on shipments originating at stations on the T&P and TNM, the inbound rate to Baden, Tex., will be as provided in Note B.

(a-2) The consignee at transit point to give a good and sufficient bond satisfactory to and approved by the carrier guaranteeing the payment of the full tariff rate in effect to the transit point at time of shipment at point of origin on any tonnage not reforwarded to interstate destinations within the time limit set forth in Item 2650.

(a-3) Subject to provisions of paragraph (a-2) on shipments originating at stations in New Mexico on the AT&SF(Santa Fe) and Texas on the P&SF(Santa Fe), the inbound rate to Borger and Cargray, Tex., will be as provided in Note L.

(a-4) Subject to provisions of paragraph (a-2), on shipments originating at stations on the MoPac, T&P and TNM, the inbound rate to Tyler, Sweeny, Pierce Jct., Hull, Grayburg, Mineola, Tex., Hazelwood, Baton Rouge or North Baton Rouge, La., will be as provided in Note L.

(b) The charges from point of origin to final destination shall be determined as provided in paragraph (c).

(Continued on following page)

For Explanation of Reference Marks, see concluding page of this supplement.

Section 2

Item	SUBJECT	APPLICATION

Part 2—
Shipments of Liquefied Petroleum Gas, CL, in bulk in tank cars, except as otherwise provided herein.

ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
Stations in the States of: Arkansas. Kansas. Louisiana (Note 6). New Mexico. Oklahoma. Texas (Note 6).	Stations shown in Note 2. (See Note 3)	Cotton Valley..La.	Storage and Reshipment in tank cars	5 and 7

Part 3—
Shipments of Liquefied Petroleum Gas, CL, in bulk in tank cars, except as otherwise provided herein.

ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
Stations in the States of: Louisiana. Texas.	Stations as named in SWL Freight Tariffs 52-C, SW/W-125-O or 249-D, ICC 4410, 4279 or 4066, respectively, to which through rates are applicable via the transit station.	Cotton Valley..La.	Storage and Reshipment in tank cars	5 and 7

2645 —Concluded

Storage in Transit of Gas, Liquefied Petroleum

Note 1—Stations in the States of:

Connecticut	Maryland	New York
Delaware	Massachusetts	Ohio
District of Columbia	Michigan	Pennsylvania
Indiana	New Hampshire	Rhode Island
Maine	New Jersey	Vermont

as named in the following tariffs:
SWL Freight Tariff SW/E-133-H, ICC 4150.
SFTB Freight Tariff 16-E, ICC S-85.

Note 2—

(a) Stations in the States of:

Arkansas	Oklahoma
Louisiana (not for export or coastwise movement)	Texas (not for export or coastwise movement)

(b) Also Baton Rouge, Destrehan, Good Hope, New Orleans, Norco, North Baton Rouge and St. Rose, La., for export or coastwise.

(c) Also stations in the States of: (See Note 4)

Alabama	Mississippi	Virginia
Florida	North Carolina	West Virginia
Georgia	South Carolina	Cincinnati, Ohio
Kentucky	Tennessee	Evansville, Ind.

as named in SWL Freight Tariff SW/S-123-M, ICC 4334.

Note 3—Applies only when through rates in SPFFC Freight Tariff 1020-S, ICC 160, SWL Freight Tariffs 52-C, 113-G, SW/S-123-M, 143-N or 191-M, ICC 4410, 4102, 4334, 4101 or 4395, respectively, also TLFB Freight Tariff 17-B, ICC 853, and TLFB Freight Tariff 48-P, ICC 890, are applicable via Cotton Valley, La.

Note 4—Will not apply via routes through Illinois, Indiana (except when destined Evansville), Ohio (except when destined Cincinnati), Pennsylvania or Maryland, nor via routes through stations in Virginia or West Virginia other than via the C&O(CD), N&W(N), N&W(V) or RF&P.

Note 5—Cotton Valley, La., will be considered intermediate when Minden, La., is intermediate.

Note 6—Not applicable to destinations named in SWL Freight Tariff 52-C, ICC 4410, for application, see Part 3 of this item.

Note 7—Subject to rules and regulations in Items 2648-2658.

Rules and Regulations

Conditions Governing the Granting of Transit

(a) The transit privileges authorized will apply only on shipments that are completely unloaded from cars at the storage facilities of the transit station and on shipments subsequently loaded and shipped out of the same storage facilities of the transit station to points beyond the switching limits of the transit station.

(b) The transit privilege authorized will not apply when the governing rate tariff prohibits trans-

		Louisiana (Note 6). New Mexico. Oklahoma. Texas (Note 6).	Stations shown in Note 2. (See Note 3)	Cotton Valley, La.	Storage and Reshipment in tank cars	5 and 7

Part 3—
Shipments of Liquefied Petroleum Gas, CL, in bulk in tank cars, except as otherwise provided herein.

		ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
2645 —Concluded	Storage in Transit of Gas, Liquefied Petroleum	Stations in the States of: Louisiana. Texas.	Stations as named in SWL Freight Tariffs 52-C, SW/W-125-O or 249-D, ICC 4410, 4279 or 4066, respectively, to which through rates are applicable via the transit station.	Cotton Valley, La.	Storage and Reshipment in tank cars	5 and 7

Note 1—Stations in the States of:

Connecticut	Maryland	New York
Delaware	Massachusetts	Ohio
District of Columbia	Michigan	Pennsylvania
Indiana	New Hampshire	Rhode Island
Maine	New Jersey	Vermont

as named in the following tariffs:
SWL Freight Tariff SW/E-133-H, ICC 4150.
SFTB Freight Tariff 16-E, ICC S-85.

Note 2—
(a) Stations in the States of:

Arkansas	Oklahoma
Louisiana (not for export or coastwise movement)	Texas (not for export or coastwise movement)

(b) Also Baton Rouge, Destrehan, Good Hope, New Orleans, Norco, North Baton Rouge and St. Rose, La., for export or coastwise.
(c) Also stations in the States of: (See Note 4)

Alabama	Mississippi	Virginia
Florida	North Carolina	West Virginia
Georgia	South Carolina	Cincinnati, Ohio
Kentucky	Tennessee	Evansville, Ind.

as named in SWL Freight Tariff SW/S-123-M, ICC 4334.

Note 3—Applies only when through rates in SPFFC Freight Tariff 1020-S, ICC 160, SWL Freight Tariffs 52-C, 113-G, SW/S-123-M, 143-N or 191-M, ICC 4410, 4102, 4334, 4101 or 4395, respectively, also TLFB Freight Tariff 17-B, ICC 853, and TLFB Freight Tariff 48-P, ICC 890, are applicable via Cotton Valley, La.

Note 4—Will not apply via routes through Illinois, Indiana (except when destined Evansville), Ohio (except when destined Cincinnati), Pennsylvania or Maryland, nor via routes through stations in Virginia or West Virginia other than via the C&O(CD), N&W(N), N&W(V) or RF&P.

Note 5—Cotton Valley, La., will be considered intermediate when Minden, La., is intermediate.

Note 6—Not applicable to destinations named in SWL Freight Tariff 52-C, ICC 4410, for application, see Part 3 of this item.

Note 7—Subject to rules and regulations in Items 2648-2658.

2648	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2642, 2645	**Conditions Governing the Granting of Transit** (a) The transit privileges authorized will apply only on shipments that are completely unloaded from cars at the storage facilities of the transit station and on shipments subsequently loaded and shipped out of the same storage facilities of the transit station to points beyond the switching limits of the transit station. (b) The transit privilege authorized will not apply when the governing rate tariff prohibits transit on Liquefied Petroleum Gas. (c) Not more than one stop for transit authorized by these rules will be permitted between origin and final destination of the transited shipments. (d) On shipments stored under these rules, the term storage includes also the following additional privileges at the transit station either prior or subsequent to placing in storage: Mixing, blending, fractionating (separating), purification, dehydrating and/or adding malodorant agent. (e) Transit privilege will be granted only to shippers or shippers' agents who will: (1) Notify the carriers' representative in writing of intention to open a transit account. (2) Permit an authorized representative of the carrier at any time to have access to records.

For Explanation of Reference Marks, see concluding page of this Tariff.

Section 2

Item	SUBJECT	APPLICATION
2650	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2642, 2645	**Part 1— Loss in Weight** In the event of claims arising from loss while shipments are in possession of the carriers, the loss upon which claim is allowed is not entitled to transit privileges and shall be cancelled as a transit credit. **Part 2— Time Limit** The time limit for transit privilege is twelve (12) months from date of the freight bill covering inbound shipment. (See Exception). Exception—Extension of Time Limit of Transit Privileges authorized above or in prior issues of this item on freight bills dated not earlier than the date shown in Column 1 and not later than the date shown in Column 2 are extended beyond the time limit, authorized and in effect on the date of inbound freight bills, for the additional period shown in Column 3, subject to the additional charges provided in Column 4, and to the conditions shown in Column 5.

COLUMN

1	2	3	4	5
Freight Bills Dated		Period of Extension	Extension Charge in Cents Per 100 lbs	Conditions Per Note
FROM	TO			
November 2, 1959.	.....	1 year (See Note 1)	2	1

Part 3— Surrender and Cancellation of Inbound Freight Bills

(a) At time billing instructions are given for shipment from the transit station, unexpired inbound billing, representative of the transit commodity forwarded, shall be surrendered to the carrier's agent. When such billing is not surrendered, local rate from transit station will apply.

(b) Not more than five (5) inbound freight bills and-or credit slips may be surrendered in support of a single outbound shipment.

(c) When for any reason the shipper desires to retain original paid inbound freight bill, a duplicate thereof will, upon request, be issued by the carriers' agent, which may be used in lieu of the original. In all such cases, the original must be stamped or endorsed "not good for transit" and the duplicate "good for transit."

Note 1—Does not extend time limit on any freight bill more than 24 months from date of inbound freight bill.

2652 — Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2642, 2645

Part 1— Waybilling Instructions

The bill of lading and shipping order for outbound transited shipments from the transit point must include thereon the following data for each inbound shipment: (Note 1)

Origin point and date of shipment therefrom; and when shown on inbound billing surrendered, the waybill reference and route from such point, waybill number and date from billing point to transit station, rate and charges paid thereon, also number of gallons at 60 degrees Fahrenheit.

Waybills from transit station must show full reference to billing into transit station, viz.: Bureau number, commodity, point of origin, waybill number and date, full route into transit station, rate and charges paid in, also number of gallons at 60 degrees Fahrenheit for each inbound shipment as represented by freight bill surrendered.

Part 2— Substitution

(a) When inbound freight bills have been surrendered by shipper in connection with shipping directions covering the movement from the transit station, it will not be permissible to withdraw same and substitute therefor other freight bills unless the freight bills originally surrendered cannot lawfully be applied in connection with such shipment.

(b) To correct errors due to surrender of non-applicable or insufficient freight bills or credit slips, proper freight bills or credit slips may be exchanged for those surrendered and additional freight bills or credit slips may be surrendered to cover the discrepancy where insufficient freight bills have been surrendered. No readjustment may be made in cases where the freight bills or credit slips originally surrendered were applicable, or where there was no surrender of billing. Non-applicable freight bills or credit slips are those the surrender of which does not result in the shipper securing the benefit of a rate lower than the flat rate from transit station to destination.

(c) In the operation of these rules it is impractical to maintain the identity of transit and non-transit tonnage in the shippers' facilities, and nothing in these rules shall prohibit the shipment of non-transit tonnage hereunder, provided the shipper shall surrender for cancellation, freight bills in excess of inventory in storage as provided in Note 2.

Note 1—If shipper elects to do so, the said information may be contained in a form approved by authorized agent of the carrier, to be attached to and made a part of both the bill of lading and shipping order.

Note 2—(a) Transit operators will be required to make a sworn statement annually, and at such other time as carriers agent may require which statement shall show:

(1) The number of net gallons of liquefied petroleum gas on hand.

(2) An itemized list of all freight bills on hand on date of settlement.

(b) If the unexpired freight bills represent greater gallonage than actually on hand,

inbound freight bills, for the additional period shown in Column 3, subject to the additional charges provided in Column 4, and to the conditions shown in Column 5.

		COLUMN				
		1	2	3	4	5
		Freight Bills Dated		Period of Extension	Extension Charge in Cents Per 100 lbs	Conditions Per Note
2650	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2642, 2645	FROM	TO			
		November 2, 1959.	.....	1 year (See Note 1)	2	1

Part 3— Surrender and Cancellation of Inbound Freight Bills

(a) At time billing instructions are given for shipment from the transit station, unexpired inbound billing, representative of the transit commodity forwarded, shall be surrendered to the carrier's agent. When such billing is not surrendered, local rate from transit station will apply.

(b) Not more than five (5) inbound freight bills and-or credit slips may be surrendered in support of a single outbound shipment.

(c) When for any reason the shipper desires to retain original paid inbound freight bill, a duplicate thereof will, upon request, be issued by the carriers' agent, which may be used in lieu of the original. In all such cases, the original must be stamped or endorsed "not good for transit" and the duplicate "good for transit."

Note 1—Does not extend time limit on any freight bill more than 24 months from date of inbound freight bill.

Part 1— Waybilling Instructions

The bill of lading and shipping order for outbound transited shipments from the transit point must include thereon the following data for each inbound shipment: (Note 1)

Origin point and date of shipment therefrom; and when shown on inbound billing surrendered, the waybill reference and route from such point, waybill number and date from billing point to transit station, rate and charges paid thereon, also number of gallons at 60 degrees Fahrenheit.

Waybills from transit station must show full reference to billing into transit station; viz.: Bureau number, commodity, point of origin, waybill number and date, full route into transit station, rate and charges paid in, also number of gallons at 60 degrees Fahrenheit for each inbound shipment as represented by freight bill surrendered.

Part 2— Substitution

(a) When inbound freight bills have been surrendered by shipper in connection with shipping directions covering the movement from the transit station, it will not be permissible to withdraw same and substitute therefor other freight bills unless the freight bills originally surrendered cannot lawfully be applied in connection with such shipment.

(b) To correct errors due to surrender of non-applicable or insufficient freight bills or credit slips, proper freight bills or credit slips may be exchanged for those surrendered and additional freight bills or credit slips may be surrendered to cover the discrepancy where insufficient freight bills have been surrendered. No readjustment may be made in cases where the freight bills or credit slips originally surrendered were applicable, or where there was no surrender of billing. Non-applicable freight bills or credit slips are those the surrender of which does not result in the shipper securing the benefit of a rate lower than the flat rate from transit station to destination.

(c) In the operation of these rules it is impractical to maintain the identity of transit and non-transit tonnage in the shippers' facilities, and nothing in these rules shall prohibit the shipment of non-transit tonnage hereunder, provided the shipper shall surrender for cancellation, freight bills in excess of inventory in storage as provided in Note 2.

Note 1—If shipper elects to do so, the said information may be contained in a form approved by authorized agent of the carrier, to be attached to and made a part of both the bill of lading and shipping order.

Note 2—(a) Transit operators will be required to make a sworn statement annually, and at such other time as carriers agent may require which statement shall show:

(1) The number of net gallons of liquefied petroleum gas on hand.

(2) An itemized list of all freight bills on hand on date of settlement.

(b) If the unexpired freight bills represent greater gallonage than actually on hand, freight bills representing the difference must be cancelled.

(c) Freight bills showing freight charges were paid prior to or on date of settlement cannot be used for transit after date of settlement unless listed as requested in paragraph (a).

2652	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2642, 2645

For Explanation of Reference Marks, see concluding page of this Tariff.

Section 2

Item	SUBJECT	APPLICATION
2654	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2642, 2645	**Part 1— Transit Weight** Surrender of transit gallonage will be based on net gallons corrected to 60 degrees Fahrenheit, received at and forwarded from transit point. **Part 2— Credit Slips** (a) When the number of net gallons at 60 degrees Fahrenheit loaded in the car for shipment from the transit station, is less than the number of net gallons at 60 degrees Fahrenheit shown by the freight bill surrendered, a credit slip shall be given by carriers' representative for such difference. (b) The credit slip must give full reference to the cancelled freight bill by showing waybill number and date, freight bill number and date, car number and initials, commodity, point of origin, Bureau number, rate and charges assessed to the transit station, also full route into transit station. (c) The same course will be pursued when credit slips are presented for greater number of net gallons at 60 degrees Fahrenheit than the number of net gallons at 60 degrees Fahrenheit of the outbound shipment, i. e., the credit slip will be cancelled, the proper notation made thereon, as in the case of the freight bill, and a new credit slip issued for the excess number of net gallons at 60 degrees Fahrenheit. **Part 3— Excess Gallonage From Transit Station** If the number of net gallons at 60 degrees Fahrenheit of the outbound shipment from transit station exceeds that covered by inbound freight bills or credit slips surrendered to the forwarding agent, the excess weight represented thereby will be charged for at the CL rate applicable from transit station to destination in effect on date of shipment from transit station. **Part 4— Preservation of Identity** In the operation of these rules, it is not necessary to preserve the identity of the commodity. **Part 5— Transfer of Ownership** (a) Transit privileges may be transferred when there is change of ownership at transit station only when transit operator furnishes certificate as follows: "This shipment is made in name of ..... by ..... signed....." (b) When subsidiary firm or trade names are used and a list thereof has been filed with and approved by the carrier's agent, the foregoing endorsement will not be required.
2656	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615 2620, 2625-2645	**Rates to Apply** (a) Except as provided in paragraphs (a-1, a-3 and a-4), the full tariff rate from origin or origins to transit station will be assessed and charges collected accordingly. (Notes D, H, I, J, K and L) (a-1) Subject to provisions of paragraph (a-2) on shipments originating at stations on the T&P and TNM, the inbound rate to Baden, Tex., will be as provided in Note B. (a-2) The consignee at transit point to give a good and sufficient bond satisfactory to and approved by the carrier guaranteeing the payment of the full tariff rate in effect to the transit point at time of shipment at point of origin on any tonnage not reforwarded to interstate destinations within the time limit set forth in Item 2650. (a-3) Subject to provisions of paragraph (a-2) on shipments originating at stations in New Mexico on the AT&SF(Santa Fe) and Texas on the P&SF(Santa Fe), the inbound rate to Borger, Tex., will be as provided in Note L. (a-4) Subject to provisions of paragraph (a-2), on shipments originating at stations on the MoPac, T&P and TNM, the inbound rate to Tyler, Sweeny, Pierce Jct., Hull, Grayburg, Mineola, Tex., Hazelwood, Baton Rouge or North Baton Rouge, La., will be as provided in Note L. (b) The charges from point of origin to final destination shall be determined as provided in paragraph (c). (c) Charges from transit station to destination will be the difference between the charges assessed to the transit station and the charges based on the through rate applicable from point of origin to destination (see paragraphs (d) and (g)), plus transit charge and other applicable charges, if any, for additional services as authorized in lawfully published tariffs on file with the ICC on interstate traffic and with the respective State Commissions on Intrastate traffic. (d) The through charges to be applied from origin to final destination shall be computed on basis of the applicable rate in effect on date of shipment from original point of origin or origins as follows: 1. From point of origin to destination via transit station, or 2. From point of origin to transit station, or 3. From transit station to destination, whichever is highest. (e) The weight of the gallons surrendered from each origin point to transit station shall be determined by multiplying the net gallons at 60 degrees Fahrenheit by the applicable tariff weight per gallon. (f) The total weight of shipment from transit station shall be determined by multiplying the net gallons at 60 degrees Fahrenheit by the applicable tariff weight per gallon. (g) Exception to paragraph (d). On shipments for export or coastwise movement, the through rate to be applied shall be the export or coastwise rate in effect on date of shipment from original point of origin or origins, or from transit point, whichever is higher, plus transit charge to port of exit. Port of exit will be considered the final destination in the application of the rule shown in Items 2656 and 2658. (h) In instances where the through export or coastwise rates to the Gulf Ports (Note A) to which reshipment is made are less than the rates paid to the transit point, refund will be made down to such through export or coastwise rate through the medium of claim to be filed by shipper or owner, plus the transit charge shown in Item 2658.

(Continued on following page)

Section 2

Item	SUBJECT	APPLICATION
2656 —Continued	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2645	**Note A—** **Texas Ports:** Atreco, Beaumont, Baytown, Chaison, Corpus Christi, Galveston, Gladys, Houston, Orange, Port Arthur, Port Neches, Smiths Bluff, Sun, Texas City, West Port Arthur. **Louisiana Ports:** Baton Rouge, Destrehan, Lake Charles, McElroy, New Orleans, Norco, North Baton Rouge, West Lake, West Lake Charles. **Note B**—Liquefied Petroleum Gas in tank cars, CL(RB), subject to rules and regulations of the ICC reproduced in T. C. George's Tariff 13, ICC 13. Freight charges will be assessed on basis of weight determined by multiplying the net gallons at 60 degrees Fahrenheit, by a weight of 4.7 lbs per gallon, subject to min wt of 44,000 lbs. (Shipper shall show on the bill of lading the number of net gallons at 60 degrees Fahrenheit, loaded at point of origin.)

Rates in Cents Per 100 lbs (Subject to Note C)

MILES	Rates	MILES	Rates	MILES	Rates
20 and under	5½	210 and over 200	21	390 and over 380	40
25 and over 20	6½	220 and over 210	22	410 and over 390	41
40 and over 25	7	230 and over 220	25	425 and over 410	42
50 and over 40	8½	240 and over 230	25	450 and over 425	43
65 and over 50	9	250 and over 240	26	475 and over 450	45
90 and over 65	10	260 and over 250	27	500 and over 475	46
100 and over 90	10½	270 and over 260	27	525 and over 500	46
110 and over 100	11	280 and over 270	28	550 and over 525	47
120 and over 110	13	290 and over 280	29	575 and over 550	48
130 and over 120	14	310 and over 290	32	600 and over 575	48
140 and over 130	16	320 and over 310	33	625 and over 600	49
150 and over 140	17	330 and over 320	36	650 and over 625	50
160 and over 150	18	340 and over 330	36	675 and over 650	50
170 and over 160	18	350 and over 340	37	700 and over 675	53
180 and over 170	19	360 and over 350	38	725 and over 700	55
190 and over 180	20	370 and over 360	38	750 and over 725	56
200 and over 190	21	380 and over 370	39	765 and over 750	56

Note C—From T&P origins applies via T&P direct.
From TNM origins via TNM, Monahans, Tex., T&P.

Note D—(Applicable only in connection with Item 2635 (Pierce Jct., Tex., only) and Item 2640 (Grayburg and Hull, Tex., only).) (Note M)

Subject to paragraph (a-2) on shipments originating at points in Texas where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 29040, TLFB Freight Tariff 48-P, ICC 890, such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

Subject to paragraph (a-2) on shipments originating at points in New Mexico on TNM where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 14337, SWL Freight Tariff 113-G, ICC 4102. Such rates will be considered the applicable rate for the purpose of determining the through rate under the provisions of paragraph (d).

Note H—Applicable only in connection with Item 2625. (Note M)

Subject to paragraph (a-2) on shipments originating at points in Texas where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 29040, TLFB Freight Tariff 48-P, ICC 890. Such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

Subject to paragraph (a-2) on shipments originating at points in New Mexico on the TNM, where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the rates published in Item 14337, SWL Freight Tariff 113-G, ICC 4102. Such rates will be considered the applicable rate for the purpose of determining the through rate under the provisions of paragraph (d).

Note I—(Applicable only in connection with Item 2635) (Sweeny, Tex., only.)

Subject to paragraph (a-2) on shipments originating at points in Texas, where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 29040, TLFB Freight Tariff 48-P, ICC 890. Such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

	Corpus Christi	Port Arthur	West Port Arthur

Louisiana Ports:

Baton Rouge	McElroy	North Baton Rouge
Destrehan	New Orleans	West Lake
Lake Charles	Norco	West Lake Charles

Note B—Liquefied Petroleum Gas in tank cars, CL(R13), subject to rules and regulations of the ICC reproduced in T. C. George's Tariff 13, ICC 13. Freight charges will be assessed on basis of weight determined by multiplying the net gallons at 60 degrees Fahrenheit, by a weight of 4.7 lbs per gallon, subject to min wt of 44,000 lbs. (Shipper shall show on the bill of lading the number of net gallons at 60 degrees Fahrenheit, loaded at point of origin.)

Rates in Cents Per 100 lbs (Subject to Note C)

MILES	Rates	MILES	Rates	MILES	Rates
20 and under.....	5½	210 and over 200.....	21	390 and over 380.....	40
25 and over 20.....	6½	220 and over 210.....	22	410 and over 390.....	41
40 and over 25.....	7	230 and over 220.....	25	425 and over 410.....	42
50 and over 40.....	8½	240 and over 230.....	25	450 and over 425.....	43
65 and over 50.....	9	250 and over 240.....	26	475 and over 450.....	45
90 and over 65.....	10	260 and over 250.....	27	500 and over 475.....	46
100 and over 90.....	10½	270 and over 260.....	27	525 and over 500.....	46
110 and over 100.....	11	280 and over 270.....	28	550 and over 525.....	47
120 and over 110.....	13	290 and over 280.....	29	575 and over 550.....	48
130 and over 120.....	14	310 and over 290.....	32	600 and over 575.....	48
140 and over 130.....	16	320 and over 310.....	33	625 and over 600.....	49
150 and over 140.....	17	330 and over 320.....	36	650 and over 625.....	50
160 and over 150.....	18	340 and over 330.....	36	675 and over 650.....	50
170 and over 160.....	18	350 and over 340.....	37	700 and over 675.....	53
180 and over 170.....	19	360 and over 350.....	38	725 and over 700.....	55
190 and over 180.....	20	370 and over 360.....	38	750 and over 725.....	56
200 and over 190.....	21	380 and over 370.....	39	765 and over 750.....	56

2656 —Continued

Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2645

Note C—From T&P origins applies via T&P direct.
From TNM origins via TNM, Monahans, Tex., T&P.

Note D—(Applicable only in connection with Item 2635 (Pierce Jct., Tex., only) and Item 2640 (Grayburg and Hull, Tex., only).) (Note M)

Subject to paragraph (a-2) on shipments originating at points in Texas where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 29040, TLFB Freight Tariff 48-P, ICC 890, such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

Subject to paragraph (a-2) on shipments originating at points in New Mexico on TNM where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 14337, SWL Freight Tariff 113-G, ICC 4102. Such rates will be considered the applicable rate for the purpose of determining the through rate under the provisions of paragraph (d).

Note H—Applicable only in connection with Item 2625. (Note M)

Subject to paragraph (a-2) on shipments originating at points in Texas where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 29040, TLFB Freight Tariff 48-P, ICC 890. Such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

Subject to paragraph (a-2) on shipments originating at points in New Mexico on the TNM, where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the rates published in Item 14337, SWL Freight Tariff 113-G, ICC 4102. Such rates will be considered the applicable rate for the purpose of determining the through rate under the provisions of paragraph (d).

Note I—(Applicable only in connection with Item 2635) (Sweeny, Tex., only.)

Subject to paragraph (a-2) on shipments originating at points in Texas, where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Item 29040, TLFB Freight Tariff 48-P, ICC 890. Such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

Note J—(Applicable only in connection with Item 2635 (Borger and Pampa, Tex).)

Subject to paragraph (a-2) on shipments originating at Rankin, Tex., on P&SF(Santa Fe), where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the rates published in Item 29040, TLFB Freight Tariff 48-P, ICC 890. Such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

(Concluded on following page)

Section 2

Item	SUBJECT	APPLICATION

Note K—Applicable only in connection with Item 2615.

Subject to paragraph (a-2) on shipments originating at points in Texas, where bills of lading carry notation that shipment is for storage in transit and subsequent reshipment to interstate destinations via rail, inbound freight charges will be assessed on basis of the interstate rates published in Items 27160 or 29040, whichever is lower, published in TLFB Freight Tariff 48-P, ICC 890. Such rates will be considered applicable for the purpose of determining the through rate under the provisions of paragraph (d).

Note L—Transit rates to be applied on inbound shipment of Liquefied Petroleum Gas, in tank cars, CL, subject to (R39), regulations of the ICC reproduced in T. C. George's Tariff 13, ICC 13. Freight charges will be assessed on basis of weight determined by multiplying the net gallons at 60 degrees Fahrenheit, by a weight of 4.7 lbs per gallon, subject to min wt of 44,000 lbs. (Shipper shall show on the bill of lading the number of net gallons at 60 degrees Fahrenheit, loaded at point of origin.)

When the inbound rate to the transit point is as shown in Column A, the transit rate to be protected is as shown in Column B. For any rate not listed in Column A below, use the next greater (higher) rate that is listed.

2656 —Concluded — **Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2645**

Rates in Cents Per 100 lbs

A	B	A	B	A	B	A	B	A	B	A	B
17	10	30	18	44	26	57	34	70	42	82	49
18	11	31	19	45	27	58	35	71	43	83	50
19	11	32	19	46	28	59	35	72	43	84	50
20	12	34	20	47	28	60	36	73	44	85	51
21	13	35	21	48	29	62	37	74	44	86	52
22	13	36	22	49	29	63	38	75	45	87	52
24	14	37	22	50	30	64	38	76	46	88	53
25	15	38	23	52	31	65	39	77	46	89	53
26	16	39	23	53	32	66	40	78	47	90	54
27	16	40	24	54	32	67	40	79	47	91	55
28	17	41	25	55	33	68	41	80	48	92	55
29	17	43	26	56	34	69	41	81	49	93	56
										94	56

Note M—Will not apply when lower inbound freight charges result under paragraph (a-4).

2658 — **Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2645**

Part 1— Transit Charge

The transit charge shall be {(N14)(80)4½ / (N14)(81)4½} cents per hundred lbs on the outbound weight of the transit portion, which shall be in addition to the through rate.

Part 2— Switching and Absorption Charges

Shipments granted transit privilege will be subject to the same switching charges and absorptions thereof, if any, at the transit station as are applicable upon shipments destined to or originating at the transit station as provided in tariffs lawfully on file with the ICC on interstate traffic or with the proper State Commission on intrastate traffic. Any switching charges not absorbed will be in addition to any other charges applicable.

Part 3— Custody and Possession

While shipments are being transited under the rules and regulations provided herein, their custody and possession as between the railroad and shipper, consignee or owner shall be that of shipper, consignee or owner.

(80) Applies only at Baton Rouge, La., Memphis, Tenn., New Orleans, La., Tenark, Ark., or West Memphis, Ark.

(81) Will not apply at Baton Rouge or New Orleans, La.

2700 — **Storage in Transit of Glass Lamp Chimneys, Other than Cut Glass**

Shipments of Glass Lamp Chimneys, other than cut glass, CL.

ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
Sapulpa.....Okla.	Stations named in SWL Freight Tariff 224-I. Natchez.....Miss. Vicksburg.....Miss. New Orleans.....La.	Fort Smith....Ark. Memphis.....Tenn.	Storage	1, 2 and 3
	Memphis.....Tenn.	Fort Smith....Ark.		

Note 1—Subject to a transit charge of 7½ cents per 100 lbs on the weight of the outbound shipment.

Note 2—Shipments must be forwarded from the transit station by the inbound carrier in road-

CL, subject to (89), regulations of the ICC reproduced in T. C. George's Tariff 13, ICC 13. Freight charges will be assessed on basis of weight determined by multiplying the net gallons at 60 degrees Fahrenheit, by a weight of 4.7 lbs per gallon, subject to min wt of 44,000 lbs. (Shipper shall show on the bill of lading the number of net gallons at 60 degrees Fahrenheit, loaded at point of origin.)

When the inbound rate to the transit point is as shown in Column A, the transit rate to be protected is as shown in Column B. For any rate not listed in Column A below, use the next greater (higher) rate that is listed.

2656 —Concluded	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2645	Rates in Cents Per 100 lbs											
		A	B	A	B	A	B	A	B	A	B	A	B
		17	10	30	18	44	26	57	34	70	42	82	49
		18	11	31	19	45	27	58	35	71	43	83	50
		19	11	32	19	46	28	59	35	72	43	84	50
		20	12	34	20	47	28	60	36	73	44	85	51
		21	13	35	21	48	29	62	37	74	44	86	52
		22	13	36	22	49	29	63	38	75	45	87	52
		24	14	37	22	50	30	64	38	76	46	88	53
		25	15	38	23	52	31	65	39	77	46	89	53
		26	16	39	23	53	32	66	40	78	47	90	54
		27	16	40	24	54	32	67	40	79	47	91	55
		28	17	41	25	55	33	68	41	80	48	92	55
		29	17	43	26	56	34	69	41	81	49	93	56
												94	56

Note M—Will not apply when lower inbound freight charges result under paragraph (a-4).

2658	Rules and Regulations in Connection with Transit Privileges in Items 2610, 2615, 2620, 2625-2645	**Part 1— Transit Charge** The transit charge shall be {(80)(84) / (81)(84)} cents per hundred lbs on the outbound weight of the transit portion, which shall be in addition to the through rate. **Part 2— Switching and Absorption Charges** Shipments granted transit privilege will be subject to the same switching charges and absorptions thereof, if any, at the transit station as are applicable upon shipments destined to or originating at the transit station as provided in tariffs lawfully on file with the ICC on interstate traffic or with the proper State Commission on intrastate traffic. Any switching charges not absorbed will be in addition to any other charges applicable. **Part 3— Custody and Possession** While shipments are being transited under the rules and regulations provided herein, their custody and possession as between the railroad and shipper, consignee or owner shall be that of shipper, consignee or owner. (80) Applies only at Baton Rouge, La., Memphis, Tenn., New Orleans, La., Tenark, Ark., or West Memphis, Ark. (81) Will not apply at Baton Rouge or New Orleans, La.

Shipments of Glass Lamp Chimneys, other than cut glass, CL.

2700 Storage in Transit of Glass Lamp Chimneys, Other than Cut Glass	ORIGINATING AT	DESTINED TO	MAY BE STOPPED AT	FOR	SUBJECT TO NOTES
	Sapulpa.....Okla.	Stations named in SWL Freight Tariff 224-I. Natchez.....Miss. Vicksburg.....Miss. New Orleans.....La.	Fort Smith....Ark. Memphis.....Tenn.	Storage	1, 2 and 3
		Memphis.....Tenn.	Fort Smith....Ark.		

Note 1—Subject to a transit charge of 7½ cents per 100 lbs on the weight of the outbound shipment.

Note 2—Shipments must be forwarded from the transit station by the inbound carrier in road-haul service.

Note 3—Subject to rules and regulations in Items 400-405, 408 (Note 4), 410-465, 470 (Note 5) and 475-520.

Note 4—Fort Smith, Ark., on the StLSF, will be considered intermediate when Monett, Mo., on the StLSF is intermediate.

Note 5—The substitution of tonnage originating at the transit station for tonnage from origin station is not permitted.

(RN 17691)

For Explanation of Reference Marks, see concluding page of this Tariff.

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In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 209

UNION PETROLEUM CORP., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B) is reported at 376 ~~U.S.~~ 569. (F. 2d

JURISDICTION

The judgment of the court of appeals was entered on April 10, 1967. A petition for rehearing was denied on May 1, 1967. The petition for a writ of certi-

orari was filed on May 31, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the evidence was sufficient to sustain petitioner's conviction.

STATUTE INVOLVED

49 U.S.C. 41(1) provides in pertinent part:

> [I]t shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect to the transportation of any property in interstate or foreign commerce by any common carrier subject to [the Interstate Commerce Act] * * * whereby any such property shall by any device whatever be transported at a less rate than that named in the tariffs published and filed by such carrier as is required by said Act * * *, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether carrier or shipper, who shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such revates, concession, or discrimination shall be deemed guilty of a misdemeanor * * *.

STATEMENT

Petitioner, a corporation, after waiving a trial by jury, was convicted in the United States District Court for the Eastern District of Oklahoma under a twenty-six count information charging that petitioner

knowingly solicited and received railroad rate concessions on shipments of propane gas by falsely representing to the carrier that the shipments were accorded storage-in-transit service and were thus entitled to a rate of approximately one-fifth the usual rate between the shipping point and the destination point, in violation of the Elkins Act, 49 U.S.C. 41(1) (R. 1-17).[1] On September 10, 1965, petitioner was fined $1,000 on each count, the minimum fine possible under the Act (R. 18, 167-168). The court of appeals affirmed.

Petitioner is an Oklahoma corporation engaged in the distribution and sale of liquefied petroleum gas. In early 1962, petitioner arranged to buy gas in Texas and sell it in Sunray, Oklahoma, and to buy different gas in Sunray, Oklahoma, and sell it in Missouri. Petitioner was aware that a special "transit privilege" could be obtained by a distributing company which shipped gas to a storage facility, unloaded and stored it, and subsequently reloaded it and shipped it on to a second destination. Under the transit privilege a distributor would be permitted (for a small additional charge) to reship the gas from the storage facility[2] to the second destination

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[1] "R." refers to the printed record in the court below. "S." refers to the stipulation between the parties which was filed in the court of appeals on October 20, 1966.

[2] Since any specific liquefied petroleum gas is a fungible commodity and since it is impractible to avoid the commingling, in the shipper's storage facilities, of gas obtained from various sources, the regulations permit shipping out at transit rates of the same quantity of stored gas as was shipped in,

at a rate substantially less than the usual charge for shipments between those two points—a rate equal to the through rate from the point of origin to the second destination less the amount already paid for shipment between the point of origin and the storage facility (S. 1-3).

On February 9, 1962, petitioner applied to a railroad representative for transit privileges at Sunray, Oklahoma (Def. Exh. 2; R. 85-86). That representative acknowledged receipt of the "application for storage-in-transit privileges on liquefied petroleum gas stored in your facilities at Sunray, Oklahoma" (Def. Exh. 3; R. 86), and sent petitioner a form for completion and execution. Petitioner completed the form, representing the purpose of its transfer operation as "Storage" [*] and the storage capacity of the facility as 4,556,128 gallons (Def. Exh. 4; R. 86). Petitioner in fact had no storage facilities at Sunray at the time of the application, nor were any thereafter acquired (R. 98; S. 2).

Subsequently, on numerous occasions in 1962 and 1963, petitioner purchased isobutane gas from suppliers in Texas, shipped it in railroad tank cars to Sunray, Oklahoma, and, pursuant to contract, sold it to the Sunray D-X Oil Company which used it in the

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whether or not its separate identity has been maintained (R. 134-135; see Pet. App. D, at p. 256, item 2652, part 2(c)).

[*] In addition to simply storing the gas, a shipper is permitted to submit it to such processes as blending, purifying, dehydrating, etc., either prior or subsequent to placing it in storage (see Pet. App. D, at p. 255, item 2648(d); Def. Exh. 4).

production of high octane gasoline. None of the gas was stored by or for petitioner. Petitioner in turn purchased locally-produced propane gas from Sunray D-X, shipped it in railroad tank cars to Versailles or Boonville, Missouri, and there sold it to the Gygr Gas Company. In making the latter shipment, petitioner, under its approved application for transit privileges, claimed and was granted the lower transit rate as though it were simply shipping on to Missouri gas which it had earlier shipped in from Texas and placed in storage[4] (R. 65, 67, 72-73; S. 1-3).

At the end of 1962, the railroad representative required that, pursuant to the tariff regulations (see Pet. App. D, at p. 256, item 2652 n. 2), each shipper afforded transit privileges submit a report as to the quantity of gas stored at its transit point which was subject to being reshipped at the special transit rates. Petitioner responded by forwarding a report, in affi-

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[4] Under the applicable tariff which was published and filed with the Interstate Commerce Commission and of which petitioner had full knowledge, the shipment rate per hundred pounds of liquefied petroleum gas from Sunray, Oklahoma, to the Missouri destination was 51.5 cents. However, for liquefied petroleum gas previously shipped from the Texas points, which are here involved, to a storage facility in Sunray, Oklahoma, the transit rate from Sunray to Versailles or Boonville, Missouri, would total only 8.5 cents or 9.5 cents, respectively, instead of the usual rate of 51.5 cents. While petitioner paid the railroad the lower rate, upon selling the propane to Gygr, petitioner charged Gygr for transportation on the basis of the usual, higher rate. Since petitioner sold the propane to Gygr at a lower base price than it had paid Sunray D-X, petitioner's entire profit on the venture was attributable to the difference between the usual shipping rate and the transit rate (S. 1-4).

davit form, which represented that it had on hand 1,260,000 gallons of liquefied petroleum gas at Sunray, Oklahoma (Gov't Exh. 70; R. 102-103). Petitioner did not in fact have any gas stored at Sunray (S. 2).

ARGUMENT

Petitioner argues that a lack of *mens rea*, and an honest but mistaken belief in the applicability of the lower of two tariff rates, should preclude a conviction for receiving an unlawful railroad rate concession under the Elkins Act. Whatever the validity of this contention in the abstract, it bears no relation to the facts of this case. Here petitioner was charged with knowingly soliciting, receiving and accepting rate concessions "by the device of falsely representing to the * * * Railroad Company that [each] * * * shipment was accorded storage-in-transit service, and was entitled to the transit rate * * *" (R. 1-17). Petitioner admitted at trial that claiming a transit rate under the operation it was conducting violated the historical concept of the transit privilege (R. 25), but defended its acts on the ground that, under the particular wording of the tariff regulation dealing with commingled transit and non-transit gas (see note 2, *supra*), there was nothing to prohibit petitioner's shipping from Sunray at the transit rate a different gas of the same quantity as that which it had shipped in (R. 25-26).[5] The wording of the regu-

[5] Petitioner asserts (Pet. 5-6) that three "disinterested expert witnesses" testified at trial that this was their interpretation of the regulation. One of these witnesses was petition-

lation, however, dealt only with gas in "storage" at the "shipper's facilities" (Pet. App. D, at p. 256, item 2652, part 2(c); see *id.*, at p. 50, item 2642-D), and petitioner, so the trial court found (R. 17; see also Pet. App. 4a), had no storage facilities whatsoever in Sunray.[6] When petitioner's counsel argued at one point during the trial that petitioner "at all times acted in good faith" (R. 154), the court in response referred to petitioner's affidavit of December 31, 1962, swearing that "they have so much storage" (*ibid.*); on another occasion the court noted that the evidence revealed that petitioner "had no storage at all" and had engaged in a "subterfuge trying to bring storage where there was none" (R. 143). The evidence plainly revealed that petitioner falsely represented to the railroad that it had at Sunray large storage facilities where transit gas was being stored, and that it was on the basis of this affirmative misrepresentation of fact that petitioner had claimed, and had been given, the lower transit rate. Absence of any innocent intent and honest mistake was therefore charged, established, and found.

In any event, guilty intent is not an essential element of a prosecution under 49 U.S.C. 41(1) for soliciting and receiving a concession to

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er's own vice president in charge of traffic (R. 84); the other two were officers in similar capacities at other oil distributing companies (R. 122, 128).

[6] As noted by the court of appeals, the provision relied upon by petitioner "would seem to comprehend a different situation entirely" (Pet. App. 7a), and not one involving "a complete substitution of basically dissimilar products" (Pet. App. 9a).

transport goods at less than the published tariff rate. In construing this statute in *Armour Packing Co.* v. *United States*, 209 U.S. 56, this Court noted (209 U.S. at 85-86):

> * * * While intent is in a certain sense essential to the commission of a crime, and in some classes of cases it is necessary to show moral turpitude in order to make out a crime, there is a class of cases within which we think the one under consideration falls, where purposely doing a thing prohibited by statute may amount to an offense, although the act does not involve turpitude or moral wrong. In this case the statutes provide it shall be penal to receive transportation of goods at less than the published rate. * * * The stipulated facts show that the shippers had knowledge of the rates published and shipped the goods under a contention of their legal right to do so. This was all the knowledge or guilty intent that the act required. * * *

Left open by *Armour* was the question "[w]hether shippers who pay a rate under the honest belief that it is the lawfully established rate, when in fact it is not, are liable under the statute because of a duty resting on them to inform themselves as to the existence of the elements essential to establish a rate as required by law" (209 U.S. at 85-86). That question was answered in *Lehigh Coal & Nav. Co.* v. *United States*, 250 U.S. 556, a decision which, contrary to petitioner's contention (Pet. 6-11), did not affect the *Armour* holding. There the applicable tariff provision had been filed with and approved by the ICC, and the

defendant acted in reliance upon the validity of the tariff thus published. This Court found the tariff provision invalid, but held that a shipper's compliance with the published and apparently valid tariff provision did not constitute an offense under 49 U.S.C. 41(1). *Armour* was specifically distinguished on the ground that it had involved an omission to comply with the published tariff, an omission which the defendant attempted to justify by honesty of motive or purpose (250 U.S. at 564-565). Here, as in *Armour*, there was an omission to comply with the applicable, published tariff, and an attempted justification. This knowing omission itself is the basis of the offense under the statute. The word "knowingly," which was inserted in the statute between the dates of the *Armour* and *Lehigh* decisions, refers only to a perception of the facts which bring the activity within the prohibition of the statute, not to an awareness that the activity is in fact prohibited.[7] Here, as pointed out by the court below, petitioner "had full knowledge of the tariffs as well as all facts which would render the transit privilege inapplicable and discriminatory herein" (Pet. App. 11a; see S. 4). As stated by this Court in *Sinclair* v. *United States*, 279 U.S. 263, 299 (citing *Armour* v. *United States*, *supra*), a "mistaken view of the law is no defense."

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[7] Similarly, the decision of the Seventh Circuit in *Standard Oil Co. of Indiana* v. *United States*, 164 Fed. 376 (C.A. 7), certiorari denied, 212 U.S. 579, cited by petitioner as in conflict with the decision below (Pet. 5, 9), is, like *Lehigh*, plainly distinguishable from the factual situation here involved.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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